



## **U.S. DEPARTMENT OF HOMELAND SECURITY**

### **Office of the Secretary**

#### **6 CFR Part 5**

**[Docket No. DHS-2022-0007]**

### **Privacy Act of 1974: Implementation of Exemptions; U.S. Department of Homeland Security/Office of Inspector General-002 Investigative Records System of Records.**

**AGENCY:** Office of Inspector General, U.S. Department of Homeland Security.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Department of Homeland Security (DHS) is issuing a final rule to amend its regulations to exempt portions of a modified system of records titled, “DHS/Office of Inspector General (OIG)-002 Investigative Records System of Records” from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

**DATES:** This final rule is effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**FOR FURTHER INFORMATION CONTACT:** For general and privacy questions, please contact: Lynn Parker Dupree, (202) 343-1717, [Privacy@hq.dhs.gov](mailto:Privacy@hq.dhs.gov), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, D.C. 20528-0655.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The U.S. Department of Homeland Security (DHS) Office of Inspector General (OIG) published a notice of proposed rulemaking in the Federal Register, 86 Fed. Reg. 58226 (October 21, 2021), proposing to exempt portions of the system of

records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system of records is the DHS/OIG-002 Investigative Records System of Records. The DHS/OIG-002 Investigative Records System of Records notice was published concurrently in the Federal Register, 86 Fed. Reg 58292 (October 21, 2021), and comments were invited on both the Notice of Proposed Rulemaking (NPRM) and System of Records Notice (SORN).

DHS OIG is responsible for a wide range of oversight functions, including to initiate, conduct, supervise, and coordinate audits, investigations, inspections, and other reviews relating to the programs and operations of DHS. The DHS/OIG-002 Investigative Records System of Records assists DHS OIG with receiving and processing allegations of misconduct, including violations of criminal and civil laws, as well as administrative policies and regulations pertaining to DHS employees, contractors, grantees, and other individuals and entities within DHS. The system includes complaints and investigation-related files. DHS OIG manages information provided during the course of its investigations to: create records showing dispositions of allegations; audit actions taken by DHS management regarding employee misconduct; audit legal actions taken following referrals to the U.S. Department of Justice (DOJ) for criminal prosecution or civil action; calculate and report statistical information; manage OIG investigators' training; and manage Government-issued investigative property and other resources used for investigative activities.

### **Public Comments**

DHS received one comment on the System of Records Notice and zero comments on the Notice of Proposed Rulemaking. The comment received was in agreement with the Department moving forward with the rulemaking and notice. As such, the Department will implement the rulemaking as proposed.

## **List of Subjects in 6 CFR Part 5**

Freedom of information, Privacy.

For the reasons stated in the preamble, DHS amends chapter I of title 6, Code of Federal Regulations, as follows:

### **PART 5--DISCLOSURE OF RECORDS AND INFORMATION**

1. The authority citation for part 5 continues to read as follows:

**Authority:** 6 U.S.C. 101 et seq.; Pub. L. 107-296, 116 Stat. 2135; 5 U.S.C. 301.

Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

2. In appendix C to part 5, revise section 5 to read as follows:

#### **Appendix C to Part 5 – DHS Systems of Records Exempt From the Privacy Act**

\* \* \* \* \*

5. The DHS/OIG-002 Investigative Records System of Records consists of electronic and paper records and will be used by DHS and its components. The DHS/OIG-002 Investigative Records System of Records is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to the enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under; national security and intelligence activities; and protection of the President of the U.S. or other individuals pursuant to Section 3056 and 3056A of Title 18. The DHS/OIG-002 Investigative Records System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, State, local, tribal, foreign, or international government agencies. The Secretary of Homeland Security, pursuant to 5 U.S.C. sec. 552a(j)(2), has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3), (c)(4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f); and (g)(1). Additionally, the Secretary of Homeland Security, pursuant to 5 U.S.C. sec. 552a(k)(1),

(k)(2), and (k)(5), has exempted this system from the following provisions of the Privacy Act, 5 U.S.C. sec. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f).

Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

- (a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process. When an investigation has been completed, information on disclosures made may continue to be exempted if the fact that an investigation occurred remains sensitive after completion.
- (b) From subsection (d) (Access and Amendment to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to

such information could disclose security-sensitive information that could be detrimental to homeland security.

- (c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.
- (d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of the investigation, thereby interfering with that investigation and related law enforcement activities.
- (e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information could impede law enforcement by compromising the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.
- (f) From subsections (e)(4)(G), (H), and (I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because with the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with subsection (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS's ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal and could result in disclosure of investigative techniques, procedures, and evidence.

(j) From subsection (g)(1) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

\* \* \* \* \*

Lynn P. Dupree,  
Chief Privacy Officer,  
U.S. Department of Homeland Security.

[FR Doc. 2022-01559 Filed: 1/26/2022 8:45 am; Publication Date: 1/27/2022]